

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Havumaki	Team: Team # 7	CCRB Case #: 200714732	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 09/20/2007 4:00 AM	Location of Incident: 139-15 87 Road and 107 Precinct stationhouse	Precinct: 107	18 Mo. SOL 3/20/2009	EO SOL 3/20/2009	
Date/Time CV Reported Wed, 10/10/2007 9:29 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 10/10/2007 9:29 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Donnell Powell	15005	930975	107 PCT
2. POM Andrew Tolson	31899	933412	107 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Joan Davis	26429	915556	107 PCT
2. POM Vincent Wong	26332	931448	107 PCT
3. SGT Cindy Bernstein	02124	905569	107 PCT
4. POM Sean Pratt	28039	898315	107 PCT
5. POM Kenneth Clausey	06058	917435	107 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Andrew Tolson	Force: PO Andrew Tolson used physical force against § 87(2)(b)	
B.POM Donnell Powell	Force: PO Donnell Powell used physical force against § 87(2)(b)	
C.POM Andrew Tolson	Discourtesy: In the 107th Precinct stationhouse, PO Andrew Tolson spoke obscenely in the presence of § 87(2)(b)	

### Synopsis

On October 10, 2007, § 87(2)(b) filed a complaint by telephone with the CCRB from Riker's Island, where he was then incarcerated (Enclosure 4A-B). § 87(2)(b) alleged that at approximately 4:00 AM on September 20, 2007, he was apprehended by two police officers – who were identified by the investigation as PO Andrew Tolson and PO Donnell Powell – after he stole a GPS system from a vehicle parked in front of 139-30 87 Drive in Queens. § 87(2)(b) fled on bicycle and foot, before being caught by PO Tolson in the backyard of a house at 139-14 87 Road. Though he claimed that he surrendered to PO Tolson, § 87(2)(b) alleged that PO Tolson punched him in the back of the head, threw him to the ground, and kicked and stomped on him (Allegations A). PO Powell soon arrived, and allegedly also used force against § 87(2)(b) kicking and stomping him (Allegations B). § 87(2)(b) claimed that after he was handcuffed, an officer punched him in the side of the head. He was taken to the 107<sup>th</sup> Precinct stationhouse, where, § 87(2)(b) alleged, PO Tolson stated, “I fucked up my thumb fucking up this guy” (Allegation C).

This case was initially assigned to Investigator Samrawit Tadesse, who conducted a full investigation into § 87(2)(b)'s allegations. When Investigator Tadesse departed the CCRB, the case was transferred to Investigator Benjamin Havumaki, the undersigned investigator, who analyzed the gathered evidence and wrote this closing report.

§ 87(2)(g)

### Summary of Complaint

§ 87(2)(b)

§ 87(2)(b) a § 87(2)(b) year old black male who is 5'11" tall and weighs 180 pounds, called the CCRB on October 10, 2007 from the Riker's Island – where he was then incarcerated – and filed a complaint (Enclosure 4A-B). On November 7, 2007, he was interviewed at § 87(2)(b) ter on Riker's Island (Enclosure 5A-E). The following is a synopsis of his statements:

#### Ambulance Call Report

The Ambulance Call Report indicates that § 87(2)(b)'s chief complaint to EMS personnel was “the side of my head hurts.” The report then elaborates that § 87(2)(b) was found at the 107<sup>th</sup> Precinct in custody, complaining of swelling and abrasions from an altercation and other illegible ailments. It appears that the report notes that bleeding subsided prior to EMS's arrival. § 87(2)(b) was not suffering from nausea or dizziness, and denied feeling lethargic or feeling neck or back pain. § 87(2)(b) reported that he was “Ok” and just interested in having “someone look at it” (Enclosure 30A-B).

#### Correctional Health Services Medical Records

The medical records received from Correctional Health Services make no legible mention of any injuries related to § 87(2)(b)'s arrest struggle (Enclosure 22A-22N2)

#### Formal CCRB Statement

On September 20, 2007, at approximately 4:30am, § 87(2)(b) went to 139-30 87 Drive in Queens to break into a car that was parked in front of the address to steal the navigation system that was inside. He broke the window of this car with a spark plug, reached inside, and took out the 3" by 3" Garmin *Nouvi* navigation system, which was in a leather case. § 87(2)(b) put it in the front pouch of the hooded sweatshirt he was wearing and embarked on his bike, riding in the street towards Hillside Avenue. Then, a black unmarked police car, headlights off, came from Hillside Avenue, toward § 87(2)(b)

The passenger side door of the unmarked black car opened and PO 1, identified by the CCRB as PO Andrew Tolson, told § 87(2)(b) to “hold on, stop,” as he was getting out of the car. PO Tolson was a white male, about 6'3" tall and weighing approximately 200 pounds, who had light blond to brown hair and appeared to be in his 30s. He was in uniform. § 87(2)(b) explained that PO Tolson assumed that he

was going to stop since he was biking toward the unmarked car. § 87(2)(b) who was still riding the bicycle, threw away everything that was on him, including the navigation system he had just stolen. PO Tolson and his partner, PO 2, identified by the CCRB as PO Donnell Powell, saw what § 87(2)(b) was doing. § 87(2)(b) then turned the bicycle around and rode his bicycle away from Hillside Avenue. PO Powell was a Hispanic looking male who appeared to be about 6'1" tall and weighed around 250 pounds. He was bald, very muscular, and apparently in his 20s. PO Powell was in uniform. PO Tolson, fully out of the unmarked black car, ran after § 87(2)(b) on foot. PO Powell kept driving the car after § 87(2)(b). A half a block later, the bike chain on § 87(2)(b)'s bicycle broke. § 87(2)(b) left the bicycle on the front lawn of a house and continued running on foot. § 87(2)(b) explained that he continued running away from PO Tolson because he knew that he had just committed a crime and did not want to "stand there." At the second house he passed, § 87(2)(b) saw a black alleyway/driveway and ran toward it to go into the backyard. § 87(2)(b) ran into a small gate, which he did not see because it was very dark, temporarily stopping his entry into the backyard. PO Tolson did not say anything as he continued running after § 87(2)(b). § 87(2)(b) found the opening mechanism for the small gate and was able to open it, entering into the backyard of 139-15 87 Road.

§ 87(2)(b) continued running further into the backyard of the house. When he got to the edge, he encountered a tall fence. He gripped the very tall "X" patterned metal fence, with both hands and was getting ready to scale it. § 87(2)(b) explained that he could not just hop over the fence and needed to climb it in order to get over. He did not know if the fence had any barbed wire on it since the fence was so tall and he could not see very well in the dark. As he attempted to scale the fence, PO Tolson ran up behind him and punched him two times in the back of the head, in close succession, with a closed fist, directly above his neck. § 87(2)(b) let go of the fence and put up his hands. § 87(2)(b) kept repeating, "I'm not resisting," as PO Tolson was punching him in the back of the head. Upon further questioning, § 87(2)(b) stated that he did not see who was punching him because he did not turn around to see. The motion sensor lights that were in the back of the house had turned on, right above a window that may have been in the kitchen, soon after the officers ran into the backyard. After punching § 87(2)(b) in the head, PO Tolson grabbed his sweatshirt from behind and swung him down. § 87(2)(b) landed facedown on the ground, with his right cheek to the ground. PO Tolson punched him in the left cheekbone and started kicking him while he was lying on the ground. § 87(2)(b) could not "swing back" because he was on the ground and used his hands to cover his head. § 87(2)(b) told PO Tolson to "stop" but then PO Powell arrived and started hitting him as well. PO Tolson and PO Powell kicked § 87(2)(b) about his upper body (specifically § 87(2)(b)'s neck and the right side of his body, including his right shoulder, as well as his back) and stomped down on the back of his head with their feet. § 87(2)(b) had his hands around his head and was trying to protect his face during the three minutes that PO1 and PO2 were kicking and stomping him. § 87(2)(b) stated that he did not know which officer was kicking or stomping him on the various parts of his upper body but PO Tolson was saying, "You like running? You like running?" Neither PO Tolson nor PO Powell gave § 87(2)(b) any orders about what he should do with his hands.

§ 87(2)(b) yelled, "Yo, I'm only fifteen. I'm fifteen. I'm fifteen. I'm not resisting. Alright, alright, please. Stop, please, please." PO Tolson and PO Powell immediately stopped kicking and stomping on him. § 87(2)(b) who acknowledged that he was § 87(2)(b) years-old, explained that he told PO Tolson and PO Powell that he was fifteen because he figured that they would not hit him "so much" if they thought he was a juvenile. § 87(2)(b) voluntarily put his hands behind his back and was handcuffed while facedown on the ground. § 87(2)(b) stated that he never resisted arrest, other than running away when he had been told to stop. One of the officers then grabbed § 87(2)(b)'s shoulder (to "balance him out") and picked him up from the ground by grabbing onto the chain between the handcuffs at the same time. § 87(2)(b) did not feel any pain in his wrist or arms as he was getting picked up off the ground. PO Tolson and PO Powell realized that § 87(2)(b) was lying about his age when they saw his face. One of the officers then punched § 87(2)(b) again on the right temple. § 87(2)(b) did not know which one of the two officers hit him but he suspected that it was PO Tolson because he had had to run to catch § 87(2)(b) and because PO Tolson was probably upset since he was out of shape. By now, § 87(2)(b) was feeling woozy from the beating. A white female officer, PO 3, came towards the backyard and probably saw him getting punched after he was handcuffed. PO 3 was a black female, about 5'6" tall who had a medium build and wore her hair in a bun. She was in uniform. § 87(2)(b) explained that no other

officers would have seen him being physically assaulted by PO Tolson and PO Powell in the backyard. There were no other civilians in the area who would have witnessed the assault in the backyard and he did not see any lights being turned on in any of the nearby homes or see anybody looking out from any of the nearby homes.

PO Tolson and PO Powell walked § 87(2)(b) to the front of the house where there were two marked RMP's and one marked prisoner van. PO Tolson and PO Powell took § 87(2)(b) to one of the marked RMPs and told him to stand by the hood. § 87(2)(b) who was dizzy and achy from being beaten by the officers, leaned his upper body over the trunk of the RMP. PO Tolson told § 87(2)(b) to stand up but he replied that he was not going anywhere, that the officers "got" him – he was in handcuffs, and his body hurt. When he lifted his head off the trunk of the RMP, he saw his blood on the white paint of the police car, oozing out of the left side of his head. The blood had not been visible on his person since his hair covered the split skin. § 87(2)(b) asked PO Powell, "Why you did that to me, Powell? Come, look how little I am. Why y'all did that to me?" PO Powell told § 87(2)(b) that he should not have run.

§ 87(2)(b) remembered that PO Wong, who he identified by name, and his partner, PO 4, were some of the officers present in front of the location of his arrest. He also remembered a black female officer, PO 5, and her partner, PO 6, as being in front of the house. There were two additional officers on the scene but § 87(2)(b) did not remember anything about these officers. § 87(2)(b) was transported to the 107<sup>th</sup> Precinct stationhouse by PO Wong and PO 3.

As soon as § 87(2)(b) arrived at the 107<sup>th</sup> Precinct stationhouse, he told PO Powell that he needed medical attention. EMS was called and when EMTs arrived at the stationhouse thirty minutes later, they asked § 87(2)(b) if he wanted to go to the hospital. § 87(2)(b) told them to give him only an icepack for his head, which was now covered in lumps and cuts on the left side from PO Tolson and PO Powell hitting him. § 87(2)(b) told the EMTs that he did not need to go to the hospital and asked them for Advil. The EMTs gave § 87(2)(b) an icepack but told him that they could not give him the Advil. § 87(2)(b) explained to the CCRB that he knew there was nothing major that the doctors at the hospital could do for his injuries and that he did not know that he was refusing medical attention by not going to the hospital. § 87(2)(b)'s head was not bleeding freely by the time the EMTs arrived. The EMTs provided him with an icepack, which was covered in a napkin, and left five minutes later. § 87(2)(b) kept applying the icepack to his head wounds and every time he removed the icepack the blood that welled up from the head wound was visible on the napkin that was wrapped around the icepack.

While PO Powell was processing § 87(2)(b)'s arrest, PO Tolson came into the stationhouse rotating his right thumb. The other officers in the stationhouse asked PO Tolson what had happened to his thumb. PO Tolson said, "I fucked up my thumb fucking up this guy," while indicating § 87(2)(b) with his head.

§ 87(2)(b) found out that his left eye was bruised when one of his visitors at Riker's Island told him that he had a black eye. When § 87(2)(b) saw his face in the mirror in the visiting area at his correctional facility, he confirmed that he had a black eye. § 87(2)(b) explained that the § 87(2)(b) (where he was for the first three or four days after his arrest) – had no mirrors, and he could not see the bruises on his face.

## **Results of Investigation**

### **Witness Statements**

There are no known civilian witnesses to this incident. Investigator Tadesse and Investigator Stephen Poellot conducted a canvas of the vicinity of this incident on November 8, 2007, but only found one unidentified witness, who indicated that he just remembered the location of the vehicle that § 87(2)(b) burgled and that § 87(2)(b) fled from the police (Enclosure 32A-J).

### **Police Officer Statements**

#### **Identification of Police Officers**

In his complaint to the CCRB, § 87(2)(b) was able to name PO Donnell Powell. This identification was buttressed by § 87(2)(b)'s arrest report, which lists PO Powell as the arresting officer in this incident (Enclosure 13A-C). The roll call for September 20, 2007 shows that PO Powell worked with PO Andrew

Tolson. The SPRINT report for this incident shows that two additional units responded to the scene of arrest – Sector D and the patrol sergeant (Enclosure 24A-H). The roll call indicates that Sector D was staffed by PO Vincent Wong and PO Kenneth Clausey. Sgt. Bernstein was identified as having been at the incident scene by PO Tolson at his CCRB statement. The roll call shows that Sgt. Bernstein worked as the patrol sergeant on the date of incident; her operator was PO Sean Pratt (Enclosure 23A-G).

#### PO Andrew Tolson

PO Andrew Tolson, a § 87(2)(b) year-old white male police officer assigned to the 107<sup>th</sup> Precinct, who is 6'2" tall, weighs 205 pounds, and has brown hair and brown eyes, was interviewed at the CCRB on January 8, 2008 (Enclosure 10A-C). The following is a record of PO Tolson's statements:

#### Memobook

PO Tolson recorded in his memobook that at 4:00 AM on September 20, 2008, he arrived at 1398 87 (Road) to a larceny in progress. At 4:05 AM, PO Powell arrested one individual. PO Tolson received an injury to his left thumb. At 5:30 AM, PO Tolson arrived at § 87(2)(b) PO Tolson ended his tour at 8:00 AM and was off of work on an "LOD" (Line of Duty Injury) from September 21, 2008 through September 29, 2008 (Enclosure 7A-B).

#### Aided Report Worksheet

On the Aided Report, PO Tolson reported that in trying to apprehend a fleeing perpetrator he injured his left hand (Enclosure 8A).

#### Formal Statement

At 4:00 AM on September 20, 2007, PO Tolson and his partner received a radio-run indicating that somebody was breaking into vehicles. The suspect was a black male wearing a tan or beige jacket and was riding a bicycle. The description of this suspect was broadcast over the air. PO Powell, operating the RMP, drove over to the location, on 139<sup>th</sup> Street in Queens; the two officers had been only about a block away, and it took them less than a minute to get to the scene. Driving north on 139<sup>th</sup> Street, PO Tolson and PO Powell observed a male wearing a brown jacket riding a bicycle south on 139<sup>th</sup> Street, fitting the description of the suspect. The officers pulled up to this male, identified as § 87(2)(b) and PO Tolson exited the RMP, indicated that he was a police officer, and commanded § 87(2)(b) to stop. Upon seeing the officers, though, § 87(2)(b) made a U-turn on 139<sup>th</sup> Street and started fleeing northbound, switching from the street to the sidewalk.

PO Tolson placed a radio call for backup, giving his location, and then pursued § 87(2)(b) on foot. PO Powell, who had briefly exited the RMP, reentered and followed PO Tolson in the car, trying to cut § 87(2)(b) off. About halfway up the block, the chain fell off of the bicycle that § 87(2)(b) was riding. At some point between 87<sup>th</sup> Road and 87<sup>th</sup> Avenue, while still on 139<sup>th</sup> Street, § 87(2)(b) dumped his bicycle. He continued to flee – on foot – and began to discard items from his pockets, including a GPS system, a rubber connecting piece for this GPS, and a CD Walkman. Though PO Tolson issued § 87(2)(b) multiple commands to stop, § 87(2)(b) did not attempt to stop or acknowledge PO Tolson. § 87(2)(b) was not compliant at any point.

§ 87(2)(b) made a right turn onto 87<sup>th</sup> Road. He tried to run into a residence's backyard, but instead ran headfirst into a chain-link fence. Though it was dark out – the house was in a residential area with "normal street lights" – the area was fairly well lit and PO Tolson observed the fence, about 8' tall, saw § 87(2)(b) run into it face first, and heard a noise. PO Tolson did not know what part of § 87(2)(b)'s body made contact with the fence. He saw § 87(2)(b) open the gate and actually pass into the backyard as he came closer to the suspect.

The backyard was grass-covered, had a shed in the left corner and wood – possibly firewood – around the area where § 87(2)(b) went to try to jump over the wooden fence. There was some light in the backyard possibly emanating from another backyard. The edge of the backyard was cordoned with an 8' tall wooden fence, and § 87(2)(b) tried to climb over it. He was able to get almost onto the top of the fence before PO Tolson reached him. PO Tolson grabbed the back of § 87(2)(b)'s jacket and held § 87(2)(b)'s upper-body at waist level, pulling him off of the fence successfully. § 87(2)(b) landed chest-first. He

continued to resist, and as PO Tolson took § 87(2)(b) down, PO Tolson fell onto his thumb, and his thumb “pulled back.” PO Tolson lost use of this thumb and was forced to use his other digits.

PO Tolson struggled with § 87(2)(b) with his one functional hand, and held onto § 87(2)(b) who was still attempting to flee by flailing his arms and kicking PO Tolson. PO Tolson tried to grab § 87(2)(b)'s arms to handcuff him, but § 87(2)(b) resisted, pulling his elbows back. He tried to kick with his legs, and PO Tolson responded by trying to hold down § 87(2)(b)'s legs with his knee and continuing to try to grab § 87(2)(b)'s hands. PO Tolson was holding § 87(2)(b) using the fingers but not the thumb on his left hand. He was unable to grip at this point. § 87(2)(b) was able to hoist himself an arms length up from the ground, towards standing up from his face-down state, but did not get up further. The entire time, PO Tolson told him to “stop resisting” and “give me your hands.”

After less than one minute in the backyard, struggling alone with § 87(2)(b) PO Powell arrived. PO Powell joined PO Tolson in trying to get § 87(2)(b)'s hands behind his back, but § 87(2)(b) still fought. On the ground, PO Powell and PO Tolson punched § 87(2)(b) on the side of his ribs to get him to lower his hands and get § 87(2)(b) to stop hitting the officers. PO Powell punched § 87(2)(b) more than once; he was uncertain how many times his partner, PO Powell, punched § 87(2)(b). It was an effective tactic.

PO Tolson denied that § 87(2)(b) ever curled up in a fetal position. PO Tolson further denied ever punching § 87(2)(b) on the left side of his face around his cheekbone. He denied that § 87(2)(b) was punched or struck after being placed in handcuffs. PO Tolson never kicked § 87(2)(b) while § 87(2)(b) was lying on the ground, nor did he and PO Powell kick and stomp on § 87(2)(b) while § 87(2)(b) was on the ground. PO Tolson did not recall if he or PO Powell ever told § 87(2)(b) “You like running, you like running.” § 87(2)(b) never claimed to be a juvenile, or say “I’m fifteen, I’m fifteen,” though PO Tolson did not remember if § 87(2)(b) said anything while on the ground.

After § 87(2)(b) was handcuffed using PO Powell’s cuffs, PO Tolson and PO Powell lifted him up off of the ground, probably by his arms. § 87(2)(b) was still fighting the officers though, so PO Tolson used a handcuff control technique he’d learned in the police academy. This involved grabbing both handcuffs to prevent § 87(2)(b) from using additional force against the officers. § 87(2)(b) did not complain about pain to his wrists.

§ 87(2)(b) was field-searched and frisked for weapons at the incident scene. Both PO Tolson and PO Powell participated in this. PO Tolson did not remember if anything was recovered from § 87(2)(b) or if he still had stolen items in his pockets. PO Tolson did not notice any injuries on § 87(2)(b) who was not bleeding and did not complain of pain or injury.

Additional police units arrived at the scene as § 87(2)(b) was being taken out of the backyard. Some of these were from PO Tolson’s command. § 87(2)(b) was taken to a marked RMP driven by other officers. The arrest was given to the officers assigned to the sector in which this incident occurred. Sgt. Bernstein came to the scene, but she did not assist in dealing with § 87(2)(b). PO Tolson and other officers recovered the items § 87(2)(b) had discarded. No neighborhood residents came out during this incident.

PO Tolson and PO Powell returned to the 107<sup>th</sup> Precinct Stationhouse in their own vehicle, after remaining at the incident scene for a short while. At the stationhouse, PO Powell dealt with processing § 87(2)(b)'s arrest. PO Tolson saw § 87(2)(b) standing in front of the desk with a normal demeanor. He did not complain of pain or injury to PO Tolson at this point, nor did PO Tolson see bruises or injuries on § 87(2)(b) inside the stationhouse. PO Tolson did not recall if EMS came to the stationhouse to treat § 87(2)(b).

PO Tolson was escorted by another police officer to the hospital for his injury. He went Line-of-Duty (an AIDED card and a Line-of-Duty injury report was completed) and missed seven days of work. He was diagnosed with a sprained thumb and was treated with a splint, tape and ice for about one week. PO Tolson spoke with PO Powell about his injury, but denied that he told his partner, “I fucked up my thumb fucking

up this guy.” PO Tolson had interacted with § 87(2)(b) two weeks prior to this incident. He apprehended § 87(2)(b) in a similar situation: § 87(2)(b) fit the description of a suspect and he and another were apprehend. A different sector took this arrest, though.

#### PO Donnell Powell

PO Donnell Powell, a § 87(2)(b) year-old black male who is 5’9” tall, weighs 245 pounds, and has black hair and brown eyes, was interviewed at the CCRB on January 10, 2008 (Enclosure 17A-C). The following is a synopsis of his statements:

#### Memobook

In his memobook, PO Powell recorded that at 3:57 AM on September 20, 2008, he responded to a larceny in progress at the intersection of 139<sup>th</sup> (Street) and 87 Drive. At 4:31 AM, an arrest was made at the rear of 139-14 87 Drive.

#### Arrest Report

On the online booking sheet arrest report completed for the arrest of § 87(2)(b) PO Powell reported that § 87(2)(b) was observed by a witness breaking and entering a vehicle and removing property. § 87(2)(b) then fled into an enclosed property and resisted arrest by flailing his arms and legs, intending to prevent “a police officer from the course of performance,” and injuring an officer. PO Donnell recorded the time of the arrest as 4:31 AM on September 20, 2007. The report indicates that physical force was used to prevent escape, and that no officer was injured in the course of this incident (Enclosure 13A-C).

#### Complaint Report

On the complaint report (UF 61), PO Powell gave a comparable narrative account of § 87(2)(b)’s infraction and the struggle that followed as that entered on the arrest report (Enclosure 14A-B).

#### Line of Duty Injury Report

On the witness statement of the *Injury to Member of the Department* form, PO Powell reported that he witnessed PO Tolson grab § 87(2)(b) from a fence and in so doing fall on his left hand and injure it (Enclosure 16A).

#### Criminal Court Complaint

For the criminal court complaint against § 87(2)(b) PO Powell was deposed and recorded as stating that with intent to prevent a police officer from performing a lawful duty injured a police officer, intentionally injured another person, intentionally damaged the property of another person, “knowingly and unlawfully” stole property from another, used a vehicle without its owner’s consent, knowingly possessed stolen property without its owner’s consent, and intentionally obstructed a police officer from effecting an authorize arrest.

PO Powell provided the source of the information supporting the above charges (witness and victim) and then related his observations. PO Powell saw § 87(2)(b) run away from police officers and throw objects on the ground. PO Powell recovered a GPS system from the ground – where § 87(2)(b) had thrown it – and that this system was identified by the complainant as having been stolen from him. Finally, PO Powell stated that that PO Tolson told him that § 87(2)(b) wrestled with him, causing PO Tolson to suffer a sprained left hand, and further that PO Tolson had to receive medical attention for this injury. In the course of this incident, § 87(2)(b) flailed his arms and kicked his legs to try to avoid handcuffing (Enclosure 15A-C).

#### Formal Statement

§ 87(2)(g)

§ 87(2)(b) ran into a short fence, no higher than his chest. PO Powell did not mention that § 87(2)(b) punched either him or PO Tolson, or provide this as a reason for punching § 87(2)(b)

At the stationhouse, § 87(2)(b) told PO Powell that he had lacerated his head running in the chain-link fence.

#### PO Joan Davis

PO Joan Davis, a § 87(2)(b) year-old black female police officer presently assigned to the Patrol Borough Queens North (at the time of this incident, assigned to the 107<sup>th</sup> Precinct) who is 5'5" tall, weighs 155 pounds, and has black hair and brown eyes, was interviewed at the CCRB on April 17, 2008 (Enclosure 19A-B). The following is a synopsis of her statement:

#### Memobook

PO Davis made no memobook entries for this incident (Enclosure 18A-B).

#### Formal Statement

On September 20, 2007, PO Davis worked from 12am to 8am. PO Davis was assigned to patrol sectors E, F, J, and K with PO Rodriguez. PO Davis was dressed in plainclothes was assigned to marked RMP 2345.

PO Davis was on meal break from 3:30 AM until 4:30 AM. She denied responding to a radio run about a foot pursuit or being present at the scene of arrest. She did not recognize § 87(2)(b) when presented with a photograph of him. She denied hearing any officer say "I fucked up my thumb fucking up this guy," while she was in the stationhouse. PO Davis did not remember any prisoner in the stationhouse request medical attention or see any prison with a bleeding heard wound. Finally, PO Davis denied completing an AIDED report for PO Tolson, concluding that another officer used her account.

#### Sgt. Cindy Bernstein

Sgt. Cindy Bernstein, a § 87(2)(b) year-old white female sergeant assigned to the 107<sup>th</sup> Precinct, who is 5'3" tall, weighs 140 pounds, and has brown hair and brown eyes, was interviewed at the CCRB on September 16, 2008 (Enclosure 21A-B). The following is a synopsis of her statements:

#### Memobook

In her memobook, Sgt. Bernstein recorded that at 4:00 AM on September 20, 2007, she responded on a request for additional police units to 139 (Street) and 87<sup>th</sup> Road. At 4:32 AM, she completed a (arrest) report for this incident at the precinct stationhouse (Enclosure 20A-B).

#### Formal Statement

On September 20, 2007, Sgt. Bernstein worked from 11:05 PM until 8:02 AM. The tour began on September 19, 2008. She was the patrol supervisor and worked with PO Pratt. Sgt. Bernstein dressed in uniform and was assigned to a motor vehicle – RMP 2544.

At approximately 4:00 AM on September 20, 2007, Sgt. Bernstein responded to the intersection of 87<sup>th</sup> Road and 139<sup>th</sup> Street in Queens to verify an arrest. When she arrived, she observed § 87(2)(b) in handcuffs, standing next to an RMP. There were about 6-7 officers there, too. Sgt. Bernstein did not remember seeing any visible injuries or blood on § 87(2)(b). She had no interaction with him and did not witness any officer use physical force against him. Sgt. Bernstein then verified § 87(2)(b)'s arrest.

At the stationhouse, Sgt. Bernstein did not interact with § 87(2)(b). She did not recall for certain whether she even saw him there. She did not hear § 87(2)(b) request medical attention and did not recall if she saw visible injuries or blood on him at the stationhouse. Sgt. Bernstein did not interact with EMS. She further denied hearing an officer say: "I fucked up my thumb fucking up this guy."

#### **Police Department Documents**

- The SPRINT report for this incident records that at 3:57 AM on September 20, 2007, an anonymous male called 911 to report that a male wearing a cream-colored hooded sweatshirt and riding a bicycle was trying to steal a car. At 4:00 AM, 107<sup>th</sup> Precinct sector A arrived at the scene. At 4:02 AM, the patrol sergeant arrived, along with 107<sup>th</sup> Precinct sector D. At 4:03 AM, the perpetrator was declared as in custody (for more detail, see enclosure SPRINT report or explication of this report, Enclosure 24A-H).



- The Command Log records that § 87(2)(b) was arrest at 139-14 87 Road at 4:31 AM on September 20, 2007. His physical and mental conditions were recorded as “bump on head/good” (Enclosure 25A).
- § 87(2)(b) s arrest photo depicts no visible injuries (Enclosure 6A).
- The Prisoner Holding-Pen roster indicates that § 87(2)(b) was held 10:35 AM on September 20, 2007, when he was taken to Queens Central Booking (Enclosure 28A).
- The Medical Treatment of Prisoner report records that § 87(2)(b) had a laceration to his head at 6:00 AM on September 20, 2008. The injury was deemed to be new. The ‘Prisoner Requests/Requires Medical Aid’ section was checked ‘no’ (Enclosure 27A).
- An AIDED report was completed for PO Tolson. It indicates that he was taken to Booth Memorial Hospital for his injury. In the ‘details’ section, PO Tolson is quoted as follows: “At t/p/o (time and place of occurrence) while trying to apprehend a perp who was fleeing and resisting I did injure my wrist” (Enclosure 9A-E).
- PO Andrew Tolson’s Medical Discharge Paperwork records that he was treated by emergency room medical staff at the § 87(2)(b) ital in Queens on September 20, 2008. Though the document does not indicate what determination medical staff made about PO Tolson’s injury, it does note that PO Tolson was provided educational materials for a thumb sprain (Enclosure 11A).

### **Disposition of Criminal Charges**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Complainants Criminal Conviction History**

- § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Complainant’s CCRB History**

This is § 87(2)(b) s first and only CCRB complaint (Enclosure 3A).

### **Subject Officers CCRB Histories**

Neither PO Tolson nor PO Powell has any substantiated CCRB allegations resulting in discipline (Enclosure 1A & 2A).

## **Conclusions and Recommendations**

### **Identification of Subject Officers**

In his formal CCRB statement, § 87(2)(b) differentiated PO Powell and PO Tolson by referring to PO Powell as “Powell” (Enclosure 10A-C). It is likely that he was learned PO Powell’s name, and not PO Tolson’s name, because the former was his arresting officer. The roles assigned to PO Powell and PO Tolson by § 87(2)(b) in his complaint accord with both PO Powell and PO Tolson’s accounts of this incident. Therefore, allegations A and B are pleaded against PO Tolson and PO Powell, and allegation C is pleaded against PO Tolson.

### **Undisputed Facts**

The events leading up to the struggle between § 87(2)(b) PO Tolson and PO Powell are not in dispute. § 87(2)(b) broke into a Saturn, stole a GPS system, and when approached by PO Powell and PO Tolson in a police vehicle, fled. It is not in dispute that § 87(2)(b) ran into a gate before entering the back yard

of 139-14 87 Road in Queens. He tried to scale the fence, however, was stopped by PO Tolson. The accounts then diverge.

### Disputed Facts

§ 87(2)(g)

§ 87(2)(b) asserted that PO Tolson first punched him in the back of the head, and then threw him to the ground and punched him in the cheekbone, and then, with PO Powell, kicked him, hit him, and stomped on his head. The two subject officers gave highly consistent accounts of a more balanced struggle, in which § 87(2)(b) kicked and struck them, refusing to give up his hands. While both PO Tolson and PO Powell acknowledged using force against § 87(2)(b) they told of punching him tactically in the sides of his ribs to quell his resistance.

§ 87(2)(g)

### Assessment of Evidence

At approximately 4:30 AM on September 20, 2007, § 87(2)(b) broke into a Saturn parked in front of 139-30 87 Drive in Queens. He shattered a car window using a piece of a spark plug, and removed a GPS system. A witness called the police, and PO Andrew Tolson and PO Donnell Powell quickly responded, apprehending § 87(2)(b) on 139<sup>th</sup> Street. § 87(2)(b) turned his bicycle around, and headed in the opposite direction, away from Hillside Avenue. PO Tolson and PO Powell had come from Hillside Avenue, and continued in the same direction in pursuit of § 87(2)(b) – PO Tolson on foot and PO Powell in the unmarked navy blue Ford Crown Victoria.

§ 87(2)(b) made a right turn onto 87 Road and then headed toward the backyard of 139-14 87 Road, one of the first houses on this block. He ran into a fence, then opened the gate and headed toward the back of the yard with PO Tolson trailing close behind. § 87(2)(g)

§ 87(2)(b) got to the back of the backyard and tried to climb over the chain-link fence. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Finally, § 87(2)(b) alleged that inside the 107<sup>th</sup> Precinct stationhouse, he heard PO Tolson state, “I fucked my thumb up fucking up this guy.” Both PO Tolson and PO Powell denied this remark. None of the other members of service interviewed for this case corroborated § 87(2)(b) s allegation. § 87(2)(g)

### Allegations

**Allegation A: PO Andrew Tolson used physical force against** § 87(2)(b)

**Allegation B: PO Donnell Powell used physical force against** § 87(2)(b)

§ 87(2)(g)

**Allegation C: PO Andrew Tolson spoke obscenely and rudely about** § 87(2)(b)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: